CF0000061095

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE OF MADHYA PRADESH

AT JABALPUR.

CRIMINAL APPEAL NO. 1851 OF 1996.

APPELLANT : Kunjram, S/o Dukhram Kewat, aged about 34 years, R/o Village Ira, P.S. Lalbagh, District RAJNANDGAON (M.P.)

V E R S U S

RESPONDENT : State of Madhya Pradesh

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

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मामला क्रमांक Cr.A./1851/96 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON. SHRI L.C. BHADOO & HON. SHRI DHIRENDRA MISHRA,JJ

Criminal Appeal No. 1851 of 1996

Appellant Kunjram Kewat

Vs

Respondent State of M.P.

Ms. Sangeeta Mishra, learned counsel for the appellant.
Shri U.N.S.Deo, learned G.A. with Shri D.K.Gwalre, learned P.L. for the State.

ORAL JUDGMENT
(20/03/2006)

Per L.C.Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 19.08.1996 passed by First Additional Sessions Judge, Rajnandgaon in S.T.No.190/95 whereby the learned First Additional Sessions Judge after holding the accused/appellant guilty for the commission of offences under Sections 302 and 307 of the Indian Penal Code sentenced him to undergo imprisonment for life and pay a fine of Rs.200/-, in default of payment of

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आदेश पत्रक (पूर्वानुबद्ध)

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fine to further undergo six months' S.I. under Section 302 of the IPC and to undergo seven years' R.I. and pay a fine of Rs.100/-, in default thereof to further undergo three months' S.I. under Section 307 of the IPC.

2. Case of the prosecution, in brief, is that PW-7 Narayan Lal – Village Sarpanch lodged the report P-14 on 30th August 1995 at about 1.30 a.m. in the Police Station – Lalbagh to the effect that at about 10.30 in the night of 29.08.1995 he was at his residence and at that time he came to know that accused Kunjram Kewat has committed murder of his children and wife, on which he went to the house of Kunjram where he saw the crowd of villagers, Govindram Sahu informed him that Kunjram has committed murder of his three children namely Govinda, aged one year, Raghu, aged five years and his daughter Heera Bai, aged nine years by attacking with axe and he has also attacked his wife Pardeshnin Bai with the axe who was lying inside the house in the pool of blood. After arranging the truck he along with other villagers took Pardeshnin Bai and Kunjram to the hospital. Receiving this report after registering the crime under Section 302 and 307 of the IPC, the Station House Officer left for the scene of occurrence and prepared the Panchanamas P-18 of body of Govinda, P-19 of body of Raghuram and P-20 of body of Heera Bai. He also took into possession one shirt and towel of the accused under P-22. Merg intimation P-23, P-24 and P-25 were given by Narayan Lal. Injured Pardeshnin Bai was examined by Dr. Prakash Sadani (PW-1) at the request of PW-14 Ramlakhan. He prepared the injury report P-1. Injuries present on the body of accused were also examined by Dr. Prakash Sadani at the request of police and he prepared the injury report P-2. The

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recovered articles i.e. stone, axe and bloodstained soil were sent for opinion of the doctor under P-3A and the doctor gave his report P-3. During police custody the accused gave memorandum P-6 under Section 27 of the Evidence Act to the investigating officer regarding the place where he kept the weapon of offence i.e. axe and in pursuance thereof he got recovered the axe from his house under P-7. Site plan P-8 was prepared by the Patwari. Bloodstained soil and plain soil,one bloodstained Sari, one photograph and bloodstained stone were taken into possession from the place of occurrence under P-9. Dead bodies of Govinda, Heera Bai and Raghuram were sent for postmortem examination to the District Hospital, Rajnandgaon under P-10, P-11 and P-12 respectively. Dr. Harish Joshi (PW.16) conducted the postmortem on the body of Govinda and prepared the postmortem report P-28 in which he opined that the mode of death is coma due to incised wound over the right side of neck cutting apart vertebral column in two parts at the level of C 2 and C 3 and the injuries were homicidal in nature. After conducting postmortem on the body of Heera Bai the doctor prepared the report P-29 in which he opined that the mode of death is coma due to incised wound over the back of neck cutting apart vertebral column in two parts at the level of C 2 and C 3 and the injuries were homicidal in nature. The doctor after conducting postmortem on the body of Raghuram prepared the report P-30 and opined that the mode of death is coma due to incised wound over the left side of neck cutting apart vertebral column in two parts at the level of C 3, C 4 and the injuries were homicidal in nature. The clothes of the deceased persons were taken into possession under P-13. The

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

bloodstained articles, clothes of the accused, weapon of offence – axe, stone and clothes of the deceased were sent for chemical examination to the Forensic Science Laboratory, Raipur under P-26 and after examination the report P-27 was received there from. As per the F.S.L. report the weapon of offence i.e. axe and the shirt and towel of the accused were found bloodstained and other articles of the deceased and stone were also found stained with blood. The clothes of Pardeshnin Bai were also found blood stained. After completion of the investigation charge sheet against the accused/appellant was filed in the Court of Judicial Magistrate First Class, Rajnandgaon for the commission of the offences under Section 302 and 307 of the IPC who in turn committed the case to the Sessions Judge, Rajnandgaon from where learned First Additional Sessions Judge received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused examined 16 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he pleaded his innocence and false implication in the crime in question. However, he also pleaded ignorance about the injuries received by him. Learned Additional Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph – 1 of this judgment.

4. We have heard Miss. Sangeeta Mishra, learned counsel appearing on behalf of the accused/appellant and Shri U.N.S.Deo, learned G.A. with Shri D.K.Gwalre, learned P.L. on behalf of the State/respondent.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 5 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. Homicidal deaths of Govinda, Heera Bai and Raghuram are not in dispute. Similarly, the injuries sustained by Pardeshnin Bai – wife of the accused, are also not in dispute.

6. As far as involvement of the accused/appellant in committing the murder of his two sons and one daughter and further attempting to commit the murder of his wife Pardeshnin Bai is concerned, there is no direct and ocular evidence in this case as the sole eyewitness to the incident Pardeshnin Bai (PW-8) has turned hostile. In order to rest the conviction based on the circumstantial evidence as per the settle principle, the prosecution is required to establish that such evidence satisfy the following tests:-

1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

2) those circumstances should be of a definite tendency unerringly pointing towards gilt of the accused;

3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4) the circumstantial evidence in order to sustain the conviction must be complete and incapable

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of explanation of any other hypothesis that that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

7. Learned counsel for the accused/appellant argued that in this case there is no evidence on record to connect the accused with the crime in question as the wife of the accused/appellant has turned hostile. As far as recovery of the axe and bloodstained clothes of the accused is concerned, there is no Serologists' report which establishes the involvement of the accused in the crime. She further argued that in the alternative even assuming that the offence was committed by the appellant from the facts and evidence available on record it appears that the accused committed the crime in the fit of insanity and therefore his case is covered under Section 84 of the IPC.

8. On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

9. Coming to the question of insanity, Section 84 of the IPC contemplates that "*Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.*" In order to ascertain the unsoundness of mind of the accused the crucial point of time at which unsoundness of mind should be

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

established is the time when the crime is actually committed and the burden of proving which lies on the accused in order to seek the benefit of section 84 of the IPC as has been held by the Hon'ble Apex Court in the matter of **State Vs. Ahmadulla** reported in **AIR 1961 SC 998**. In the instant case in the first instance no such plea or defence was taken by the accused when the charge sheet was filed or when the charges were framed and even during trial no such plea was raised by the accused in his defence. Even father of the accused PW-10 Dukhuram in his cross-examination has stated that it is true that one night the accused was crying without any reason but he cannot say that the accused was of unsound mind. The evidence which has come on record is that there was a dispute between the accused and his brother regarding partition of land as the father of accused had partitioned the land in three shares and one share was retained by him. At the time of partition it was resolved that the iron would be handed over to Kunjram by Arjun but Arjun did not give it to the accused and therefore Panchayat was convened where it was decided that Arju should deliver the possession of the land and iron to the accused. On that very day in the evening the accused in the first instance attacked one of his son who was at his residence and thereafter he brought two of his daughters and one son namely Santoshi, Heera Bai and Raghuram from the house of his father Dukhuram and committed the murder of Raghu and Heera Bai, however, Santoshi escaped from there. Therefore, the above evidence is suggestive of the fact that at the time of committing the crime in question the accused was not suffering from unsoundness of mind and it is not a case where the accused was not able

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to understand what is right and what is wrong as he himself brought his children from the house of his father. Even as per the evidence of Ku. Santoshi (PW-9) when she was frightened she asked her father that she wanted to go to attend the call of nature whereupon her father – the accused told her that she should not deceive him as according to him she was able to escape. Therefore, from the above evidence it is clear that the accused at the time of incident was able to understand everything and as such the arguments advanced by learned counsel for the accused/appellant in this regard is without any substance.

10. As far as the circumstantial evidence to connect the accused with the crime in question is concerned, PW-9 Ku. Santoshi daughter of the accused has clearly stated in her evidence that on the day of festival of *Teeja* they took their meal at the residence and thereafter they went to the house of their grand-father and when their father the accused/appellant Kunjram called them back to the residence, they returned to their residence. When she along with Heera Bai went to the residence, her father accused Kunjram, her mother and her brothers were at the residence and by the time she reached the house, both of her brothers Govinda and Raghu were already dead and seeing that both of them got frightened. Her father asked her to bow down her head, on which she requested her father to let her go to attend the call of nature and she will come back whereupon her father told her that she should not deceive him. Thereafter, she started raising cries by saying that her brothers have been killed by her father. Her father was holding the axe in his hand, he tried to attack her with axe but she could escape. She saw that both her brothers

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 9 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were lying dead near the photo of God, there were injuries on the neck, her mother was also sitting there and she was uttering the word "Om Namo Shivay, Om Namo Shivay". As his father was holding the axe in his hand that is why she raised screams that her father has murdered both of her brothers because the axe was stained with blood. PW-10 Dukhuram – father of the accused has stated that on the fateful day he was sleeping in his house. Santoshi and Heera Bai were at his residence and they went to the house of Kunjram and suddenly Santoshi returned back crying that both her brothers have been murdered and she was raising screams "save, save", on which the villagers gathered. When he was sleeping at his residence, the accused, his wife Pardeshnin Bai, Govinda were at the residence of the accused whereas the accused Kunjram took Raghuram from his house. He along with others went to the house of Kunjram and saw that accused Kunjram was striking stone on his head. Pardeshnin Bai was sitting there in the room. He could not see both the children as after seeing the accused he became unconscious. Blood was oozing out of the head of accused Kunjram when he was striking his head with the stone. PW-11 Bhaiyaram has stated that on the fateful night uncle of the accused namely Narad came to his house and called him and when he went to the house of accused he saw the crowd of villagers there and the villagers told him that Kunjram has murdered his three children and has inflicted injuries on Pardeshnin Bai – his wife. He saw that Pardeshnin Bai was sitting in the room drenched with blood and when he went in the room he saw that three children were lying dead. There were injuries on their necks and the accused was sitting out of his house. When they were

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 10 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

taking Kunjram and Pardeshnin Bai in a truck they saw that there were injuries on the head of the accused and blood was oozing out of the injuries. Thereafter, they took them to the hospital, Rajnandgaon. He has further stated that Panchanamas P-18, P-19 and P-20 of the dead bodies of Govind, Raghuram and Heera Bai respectively were prepared in his presence. The accused gave memorandum P-6 regarding the place where he kept the weapon of offence – axe which was written in his presence and that documents bears his signature and in pursuance thereof the axe was got recovered under P-7.

11. PW-12 Govindram has stated that on hearing about the murder of the children of accused Kunjram, he went to the house of accused. There he saw the crowd of people and he saw that accused was coming out of his house saying that whatever was to happen has happened and he will go to the temple and then he moved towards temple. Thereafter, 10-20 people of the vicinity brought the accused back from the temple and there were injuries on his head and blood was oozing out of the injuries. They took Kunjram and Pardeshnin Bai to the Hospital, Rajnandgaon. He has further stated that the stone, clothes and axe were taken into possession in his presence. Similar is the evidence of PW-2 Madan Mohan Sharma who has also stated that the accused said in his presence that whatever was to happen has happened and he is going to the temple. When he was going towards temple the villagers caught him and they said that he be taken to the police station. The whole body of the accused was drenched with blood. PW-3 Ramchandra has stated that the accused gave memorandum P-6 and in pursuance of that he got recovered the axe

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under P-7. Similar is the evidence of PW-15 P.C.Tiwari, the investigating officer regarding recovery of the axe from the accused. Therefore, from the above evidence it is established that the dead bodies of Govinda, Raghu and Heera Bai were seen by these witnesses in the house of the accused, his wife was sitting there in injured condition, the accused was also sitting there in an injured condition and as per the evidence of the PW-10 Ku. Santoshi Bai the accused was holding bloodstained axe in his hand and he attempted to attack her with axe but she somehow managed to escape on the pretext that she be allowed to go to attend the call of nature. Even the accused made extra judicial confession before PW-2 and PW-12 to the extent that whatever was to happen has happened. Apart from that circumstantial evidence the weapon of offence i.e. axe was recovered at the instance of the accused. The above circumstantial evidence further stands corroborated by the evidence of Dr. Prakash Sadani (PW-1) who examined the injuries of Pardeshnin Bai and noticed that there was compound fracture of right clevical bone and there were five incised wounds on the vital part of the body of Pardeshnin Bai and injury report P-1 was prepared by him. The doctor has further stated that he also examined the accused and found that there was a cut wound on the head and another cut wound was also on the left side of the head and there was swelling in the area of 5 cm on the head. The Dr. H.K. Joshi (PW-16) who conducted postmortem on the bodies of Raghu, Heera and Govinda has stated that injuries found on their person could be caused by the axe in question. The axe and clothes of the accused were sent for chemical examination to the F.S.L. Raipur and as per the report the same

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 12 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were found stained with blood. However, no explanation has been given by the accused regarding the injuries received by him, as to how he was sitting in the house and when he was in the house how the murder of his three children was committed so brutally. Therefore, the presence of the accused in the house at the time of incident with bloodstained axe in his hand, extrajudicial confessions made by him coupled with other circumstantial evidence and the conduct of the accused after commission of the offence, establish beyond all reasonable doubt the involvement of the accused in committing the murder of his three children and to attempting to commit the murder of his wife Pardeshnin Bai.

12. In view of the above, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court convicting and sentencing the accused/appellant under Section 302 and 307 of the IPC.

13. In the result, the appeal being devoid of merits is liable to be dismissed and is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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